

SERVED: March 18, 1993

NTSB Order No. EA-3828

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 9th day of March, 1993

|                                  |   |                 |
|----------------------------------|---|-----------------|
| JOSEPH DEL BALZO,                | ) |                 |
| Acting Administrator,            | ) |                 |
| Federal Aviation Administration, | ) |                 |
|                                  | ) |                 |
| Complainant,                     | ) |                 |
|                                  | ) | Docket SE-10585 |
| v.                               | ) |                 |
|                                  | ) |                 |
| REECE S. SAUNDERS,               | ) |                 |
|                                  | ) |                 |
| Respondent.                      | ) |                 |
|                                  | ) |                 |

**ORDER DENYING MOTION TO REOPEN**

By motion filed February 3, 1993, the Administrator urges that the Board schedule a hearing on the merits in this proceeding, in which the Administrator proposed to suspend respondent's airline transport pilot certificate for 90 days for violating 61.58(a) on seven occasions, all over a 1-week period.<sup>1</sup> Respondent has not replied. We deny the motion.

<sup>1</sup>§ 61.58(a) provides, as pertinent, that no person may act as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember unless he has satisfactorily completed required proficiency or flight checks. Respondent answered the complaint, stating that he had been given the required proficiency check, that he may have been misled that the check airman was qualified, and that the Administrator was aware of difficulties at the named airline.

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The Administrator initially issued two orders against respondent: an order of revocation, docketed as SE-10104; and this order of suspension, docketed as SE-10585. The Administrator sought consolidation of the two cases, and the law judge granted this request, by order dated January 16, 1990. It appears from the docket that respondent appealed that decision, but the docket is incomplete and, from the materials available, it seems that the law judge did not rule on that appeal. Thus, as matters stood as of the date of the hearing, the Administrator was to proceed with both cases. Indeed, the transcript references both docket numbers.

In his motion, the Administrator states that "the ALJ declined to hear the merits of 10585 pending the outcome of the hearing [on 10104]." The Administrator, therefore, would characterize what happened at the hearing as 10585 being held in abeyance, pending resolution of 10104. The problem with this argument, however, is there is nothing in the record to support it. Although it appears that the law judge may have been led to believe (by absence of mention by either party of 10585) that only one case, 10104, was set for the hearing, and his order only references that case, we can find no order, written or oral, holding 10585 in abeyance, and the Administrator cites none.

In effect, the Administrator is attempting here to correct his failure at the hearing to present any evidence regarding the charges in 10585 or to seek a postponement of that case -- a failure respondent was under no duty to rectify. The Administrator having done neither, we are not inclined to allow him now to revive the matter because we did not uphold his order of revocation in 10104.<sup>2</sup> Good cause for ignoring his omissions has not been shown, and has not even been offered.

The Administrator implicitly acknowledges his procedural failure by entitling his motion one to reopen, which assumes a matter is closed, as opposed to filing a motion to reinstate a prior schedule.<sup>3</sup> To leave no doubt of the status of this case, we will, as a strictly ministerial matter, dismiss the Administrator's complaint.

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<sup>2</sup>Administrator v. Saunders, NTSB Order EA-3672 (1992). It is clear that the Administrator would not be before us now had we affirmed his order of revocation in 10104. Motion at 2.

<sup>3</sup>We also note that, while we may be willing to entertain motions to reopen at any time, the Administrator offers no indication, and we can see none, why this motion was filed so late -- almost 5 months after our decision.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's motion to reopen is denied; and
2. The Administrator's order is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.